IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 3953 of 2007

CMP.3045/2007 OF JUDL. MAGISTRATE OF FIRST CLASS-III, KOZHIKODE
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REVN. PETITIONER: PETITIONER

MOOSAKOYA, S/O.MUHAMMED,
VAITHALAKUNNUMMAL HOUSE, CHERUPPA,
KOZHIKODE, KOZHIKODE DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE

THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, KASABA POLICE
STATION, KOZHIKODE-THROUGH THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,
KOCHI-31.

BY PUBLIC PROSECUTOR SRI. NOBLE MATHEW

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/12/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3953 OF 2007

Dated this the 19th day of November, 2007

REFERENCE ORDER

In this revision filed under sections 397 and 401 Cr.P.C. the revision petitioner, who claims himself to be the owner of a mini lorry bearing registration No.KL-13H 1107, challenges the order dated 3.11.07 passed by JFCM-III, Kozhikode, dismissing CMP.3045/07 filed by the revision petitioner seeking interim custody of the lorry under section 457 Cr.P.C.

2. The lorry in question was detected by the Sub Inspector of Police, Kasaba Police Station, Kozhikode at 9.30. a.m. on 25.10.07 from the vicinity of the Comtrust Hospital and was found carrying river sand without having any valid documents. The police party thereupon seized the sand as well as the lorry under a mahazar and produced the same before the District Collector, Kozhikode for confiscation proceedings. The Sub Inspector of Police, Kasaba Police Station also filed a report before JFCM-III, Kozhikode

informing the above seizure of the lorry. He also produced the seizure mahazar under which the lorry was seized. Thereafter, the revision petitioner filed CMP.3045/07 under section 457 Cr.P.C. seeking interim custody of the lorry. The learned Magistrate relying upon the decision reported in ***Alavi P.K. Vs. District Collector and others*** [ILR 2007 (4) Kerala 221] held that since the seizure of the vehicle was for the purpose of confiscation by the revenue officials with regard to which the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (Kerala Act 18 of 2001) are self contained, the request under section 457 cannot be granted. It is the said order passed by the Magistrate which is assailed in this revision.

3. Sri.C.M.Nazar, the learned Public Prosecutor, attempted to sustain the impugned order by placing reliance upon the observations in paragraph 6 of the decision in ***Alavi's*** case (Supra). He submitted that vehicles which are transporting sand illegally can be seized under section 23 of the Act and section 102 Cr.P.C. has no application since the

seizure is for the purpose of confiscation that the vehicle was rightly handed over to the District Collector and that the vehicle is liable for confiscation in accordance with the procedure prescribed under Rules 27 and 28 of the Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002.

5. It is true that the Division Bench in ***Alavi's*** case has taken such a view. But then, it appears that the attention of the Division Bench was not brought to one aspect of the matter. Under section 23 of the Act whoever transports sand without complying with the provisions of the Act is declared to be liable to be punished and the vehicle used for the transportation is also liable for seizure by the police or revenue officials. The liability for punishment can arise under section 20 of the Act as per which whoever contravenes any of the provisions of the Act or the Rules made thereunder is liable to be punished with imprisonment for a term of which may extend to two years or with fine which may extend to twenty five thousand rupees or with both. Under section 24 of

the Act all offences under the Act are declared to be cognizable. Thus any person who is transporting sand without complying with the provisions of the Act is committing an offence punishable under section 20 of the Act and liable to be punished and so declared under section 23 itself. Such offence being a cognizable offence, in my view, the police cannot refrain from registering a crime if they happen to stumble upon a vehicle illegally transporting sand in contravention of the provisions of the Act. If a complaint alleging the commission of a cognizable offence is given to an officer in charge of a Police Station, and such officer has no other alternative except to register a crime, then it is all the more necessary that a police officer who comes across the commission of a cognizable offence should register a crime. In other words, every act of transporting of sand without complying with the provisions of the Act involves the commission of a cognizable offence punishable under section 20 of the Act for which the registration of crime is inevitable. If so, the police officer who is bound to register a crime is

obliged under section 102 Cr.P.C. to report the seizure of the vehicle to the Magistrate having jurisdiction. In areas where the special Act is silent Section 4(2) Cr.P.C. should govern the procedure obliging the police officer to comply with Section 102 Cr.P.C. Otherwise, the Magisterial control over the police will be rendered meaningless leading to unbridled exercise of powers and consequent misuse of authority by the police. This aspect of the matter does not appear to have been highlighted before the Division Bench. I am, therefore, of the view that the matter requires elucidation and an authoritative pronouncement by a Bench. The files shall, therefore, be placed before the Hon'ble Chief Justice for appropriate orders.

(V. RAMKUMAR, JUDGE)

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